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Attorneys for Defendants **CITY OF LOS ANGELES and ALEJANDRO DOWNEY**

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

GRACIELA HERRERA; and
RUBEN ORDAZ,

Plaintiff,

vs.

CITY OF LOS ANGELES;
ALEJANDRO DOWNEY; and
DOES 2-10, inclusive,

Defendants.

Case No.: CV 16-2719 DSF (SKx)

Honorable Judge: Dale S. Fischer

Honorable Magistrate Judge: Steve King

**ANSWER OF DEFENDANTS
CITY OF LOS ANGELES AND
ALEJANDRO DOWNEY TO
PLAINTIFFS' FIRST AMENDED
COMPLAINT AND DEMAND FOR
JURY TRIAL**

COME NOW, DEFENDANTS, CITY OF LOS ANGELES and
ALEJANDRO DOWNEY, answering the PLAINTIFFS' FIRST AMENDED
COMPLAINT in the above-entitled action, for themselves and for no other parties,
admit, deny and allege as follows:

1. Answering paragraph 1 of the Complaint, no factual allegations are made
therein, and on that basis the paragraph goes unanswered.

1 2. Answering paragraph 2 of the Complaint, defendants lack sufficient
2 information and belief upon which to answer the allegations contained therein, and on
3 that basis deny the allegations.
4

5 3. Answering paragraph 3 of the Complaint, no factual allegations are made
6 therein, and on that basis the paragraph goes unanswered.
7

8 4. Answering paragraph 4 of the Complaint, no factual allegations are made
9 therein, and on that basis the paragraph goes unanswered.
10

11 5. Answering paragraph 5 of the Complaint, no factual allegations are made
12 therein, and on that basis the paragraph goes unanswered.
13

14 6. Answering paragraph 6 of the Complaint, no factual allegations are made
15 therein, and on that basis the paragraph goes unanswered.
16

17 7. Answering paragraph 7 of the Complaint, no factual allegations are made
18 therein, and on that basis the paragraph goes unanswered.
19

20 8. Answering paragraph 8 of the Complaint, no factual allegations are made
21 therein, and on that basis the paragraph goes unanswered.
22

23 9. Answering paragraph 9 of the Complaint, no factual allegations are made
24 therein, and on that basis the paragraph goes unanswered.
25

26 10. Answering paragraph 10 of the Complaint, no factual allegations are
27 made therein, and on that basis the paragraph goes unanswered.
28

1 11. Answering paragraph 11 of the Complaint, defendants lack sufficient
2 information and belief upon which to answer the allegations contained therein, and on
3 that basis deny the allegations.
4

5 12. Answering paragraph 12 of the Complaint, defendants lack sufficient
6 information and belief upon which to answer the allegations contained therein, and on
7 that basis deny the allegations.
8

9 13. Answering paragraph 13 of the Complaint, no factual allegations are
10 made therein, and on that basis the paragraph goes unanswered.
11

12 14. Answering paragraph 14 of the Complaint, no factual allegations are
13 made therein, and on that basis the paragraph goes unanswered.
14

15 15. Answering paragraph 15 of the Complaint, which incorporates by
16 reference the allegations of other paragraphs of the pleading, defendants to the same
17 extent incorporate by reference the answers provided herein to those paragraphs.
18

19 16. Answering paragraph 16 of the Complaint, defendants lack sufficient
20 information and belief upon which to answer the allegations contained therein, and on
21 that basis deny the allegations.
22

23 17. Answering paragraph 17 of the Complaint, defendants deny the
24 allegations contained therein.
25

26 18. Answering paragraph 18 of the Complaint, defendants deny the
27 allegations contained therein.
28

1 19. Answering paragraph 19 of the Complaint, defendants lack sufficient
2 information and belief upon which to answer the allegations contained therein, and on
3 that basis deny the allegations.
4

5 20. Answering paragraph 20 of the Complaint, defendants lack sufficient
6 information and belief upon which to answer the allegations contained therein, and on
7 that basis deny the allegations.
8

9 21. Answering paragraph 21 of the Complaint, defendants deny the
10 allegations contained therein.
11

12 22. Answering paragraph 22 of the Complaint, defendants lack sufficient
13 information and belief upon which to answer the allegations contained therein, and on
14 that basis deny the allegations.
15

16 23. Answering paragraph 23 of the Complaint, defendants deny the
17 allegations contained therein.
18

19 24. Answering paragraph 24 of the Complaint, no factual allegations are
20 made therein, and on that basis the paragraph goes unanswered.
21

22 25. Answering paragraph 25 of the Complaint, no factual allegations are
23 made therein, and on that basis the paragraph goes unanswered.
24

25 26. Answering paragraph 26 of the Complaint, which incorporates by
26 reference the allegations of other paragraphs of the pleading, defendants to the same
27 extent incorporate by reference the answers provided herein to those paragraphs.
28

1 27. Answering paragraph 27 of the Complaint, no factual allegations are
2 made therein, and on that basis the paragraph goes unanswered.
3

4 28. Answering paragraph 28 of the Complaint, defendants deny the
5 allegations contained therein.
6

7 29. Answering paragraph 29 of the Complaint, defendants deny the
8 allegations contained therein.
9

10 30. Answering paragraph 30 of the Complaint, defendants deny the
11 allegations contained therein.
12

13 31. Answering paragraph 31 of the Complaint, no factual allegations are
14 made therein, and on that basis the paragraph goes unanswered.
15

16 32. Answering paragraph 32 of the Complaint, which incorporates by
17 reference the allegations of other paragraphs of the pleading, defendants to the same
18 extent incorporate by reference the answers provided herein to those paragraphs.
19

20 33. Answering paragraph 33 of the Complaint, no factual allegations are
21 made therein, and on that basis the paragraph goes unanswered.
22

23 34. Answering paragraph 34 of the Complaint, no factual allegations are
24 made therein, and on that basis the paragraph goes unanswered.
25

26 35. Answering paragraph 35 of the Complaint, no factual allegations are
27 made therein, and on that basis the paragraph goes unanswered.
28

1 36. Answering paragraph 36 of the Complaint, no factual allegations are
2 made therein, and on that basis the paragraph goes unanswered.

3
4 37. Answering paragraph 37 of the Complaint, defendants deny the
5 allegations contained therein.

6
7 38. Answering paragraph 38 of the Complaint, no factual allegations are
8 made therein, and on that basis the paragraph goes unanswered.

9
10 39. Answering paragraph 39 of the Complaint, no factual allegations are
11 made therein, and on that basis the paragraph goes unanswered.

12 40. Answering paragraph 40 of the Complaint, which incorporates by
13 reference the allegations of other paragraphs of the pleading, defendants to the same
14 extent incorporate by reference the answers provided herein to those paragraphs.

15
16 41. Answering paragraph 41 of the Complaint, no factual allegations are
17 made therein, and on that basis the paragraph goes unanswered.

18
19 42. Answering paragraph 42 of the Complaint, no factual allegations are
20 made therein, and on that basis the paragraph goes unanswered.

21
22 43. Answering paragraph 43 of the Complaint, no factual allegations are
23 made therein, and on that basis the paragraph goes unanswered.

24
25 44. Answering paragraph 44 of the Complaint, no factual allegations are
26 made therein, and on that basis the paragraph goes unanswered.

1 45. Answering paragraph 45 of the Complaint, no factual allegations are
2 made therein, and on that basis the paragraph goes unanswered.

3
4 46. Answering paragraph 46 of the Complaint, no factual allegations are
5 made therein, and on that basis the paragraph goes unanswered.

6
7 47. Answering paragraph 47 of the Complaint, no factual allegations are
8 made therein, and on that basis the paragraph goes unanswered.

9
10 48. Answering paragraph 48 of the Complaint, no factual allegations are
11 made therein, and on that basis the paragraph goes unanswered.

12 49. Answering paragraph 49 of the Complaint, defendants deny the
13 allegations contained therein.

14
15 50. Answering paragraph 50 of the Complaint, no factual allegations are
16 made therein, and on that basis the paragraph goes unanswered.

17
18 51. Answering paragraph 51 of the Complaint, no factual allegations are
19 made therein, and on that basis the paragraph goes unanswered.

20 52. Answering paragraph 52 of the Complaint, which incorporates by
21 reference the allegations of other paragraphs of the pleading, defendants to the same
22 extent incorporate by reference the answers provided herein to those paragraphs.

23
24 53. Answering paragraph 53 of the Complaint, defendants deny the
25 allegations contained therein.

1 54. Answering paragraph 54 of the Complaint, defendants deny the
2 allegations contained therein.
3

4 55. Answering paragraph 55 of the Complaint, defendants deny the
5 allegations contained therein.
6

7 56. Answering paragraph 56 of the Complaint, defendants lack sufficient
8 information and belief upon which to answer the allegations contained therein, and on
9 that basis deny the allegations.
10

11 57. Answering paragraph 57 and subparts (a-g) and (f sic) of the Complaint,
12 defendants deny the allegations contained therein.
13

14 58. Answering paragraph 58 of the Complaint, no factual allegations are
15 made therein, and on that basis the paragraph goes unanswered.
16

17 59. Answering paragraph 59 of the Complaint, no factual allegations are
18 made therein, and on that basis the paragraph goes unanswered.
19

20 60. Answering paragraph 60 of the Complaint, no factual allegations are
21 made therein, and on that basis the paragraph goes unanswered.
22

23 61. Answering paragraph 61 of the Complaint, no factual allegations are
24 made therein, and on that basis the paragraph goes unanswered.
25

26 62. Answering paragraph 62 of the Complaint, no factual allegations are
27 made therein, and on that basis the paragraph goes unanswered.
28

1 63. Answering paragraph 63 of the Complaint, no factual allegations are
2 made therein, and on that basis the paragraph goes unanswered.
3

4 64. Answering paragraph 64 of the Complaint, no factual allegations are
5 made therein, and on that basis the paragraph goes unanswered.
6

7 65. Answering paragraph 65 of the Complaint, no factual allegations are
8 made therein, and on that basis the paragraph goes unanswered.
9

10 66. Answering paragraph 66 of the Complaint, no factual allegations are
11 made therein, and on that basis the paragraph goes unanswered.
12

13 67. Answering paragraph 67 of the Complaint, which incorporates by
14 reference the allegations of other paragraphs of the pleading, defendants to the same
15 extent incorporate by reference the answers provided herein to those paragraphs.
16

17 68. Answering paragraph 68 of the Complaint, defendants deny the
18 allegations contained therein.
19

20 69. Answering paragraph 69 of the Complaint, no factual allegations are
21 made therein, and on that basis the paragraph goes unanswered.
22

23 70. Answering paragraph 70 of the Complaint, no factual allegations are
24 made therein, and on that basis the paragraph goes unanswered.
25

26 71. Answering paragraph 71 of the Complaint, defendants deny the
27 allegations contained therein.
28

1 72. Answering paragraph 72 of the Complaint, no factual allegations are
2 made therein, and on that basis the paragraph goes unanswered.

3
4 73. Answering paragraph 73 of the Complaint, no factual allegations are
5 made therein, and on that basis the paragraph goes unanswered.

6
7 74. Answering paragraph 74 of the Complaint, which incorporates by
8 reference the allegations of other paragraphs of the pleading, defendants to the same
9 extent incorporate by reference the answers provided herein to those paragraphs.

10
11 75. Answering paragraph 75 and subparts (a-g) of the Complaint, defendants
12 deny the allegations contained therein.

13
14 76. Answering paragraph 76 of the Complaint, no factual allegations are
15 made therein, and on that basis the paragraph goes unanswered.

16
17 77. Answering paragraph 77 of the Complaint, no factual allegations are
18 made therein, and on that basis the paragraph goes unanswered.

19
20 78. Answering paragraph 78 of the Complaint, no factual allegations are
21 made therein, and on that basis the paragraph goes unanswered.

22 79. Answering paragraph 79 of the Complaint, no factual allegations are
23 made therein, and on that basis the paragraph goes unanswered.

24
25 80. Answering paragraph 80 of the Complaint, which incorporates by
26 reference the allegations of other paragraphs of the pleading, defendants to the same
27 extent incorporate by reference the answers provided herein to those paragraphs.
28

1 81. Answering paragraph 81 of the Complaint, no factual allegations are
2 made therein, and on that basis the paragraph goes unanswered.
3

4 82. Answering paragraph 82 of the Complaint, no factual allegations are
5 made therein, and on that basis the paragraph goes unanswered.
6

7 83. Answering paragraph 83 of the Complaint, defendants deny the
8 allegations contained therein.

9 84. Answering paragraph 84 of the Complaint, no factual allegations are
10 made therein, and on that basis the paragraph goes unanswered.
11

12 85. Answering paragraph 85 of the Complaint, no factual allegations are
13 made therein, and on that basis the paragraph goes unanswered.
14

15 86. Answering paragraph 86 of the Complaint, no factual allegations are
16 made therein, and on that basis the paragraph goes unanswered.
17

18 87. Answering paragraph 87 of the Complaint, no factual allegations are
19 made therein, and on that basis the paragraph goes unanswered.
20

21 88. Answering paragraph 88 of the Complaint, no factual allegations are
22 made therein, and on that basis the paragraph goes unanswered.
23

24 89. Answering paragraph 89 of the Complaint, no factual allegations are
25 made therein, and on that basis the paragraph goes unanswered.

26 90. Answering paragraph 90 of the Complaint, defendants deny the
27 allegations contained therein.
28

1 91. Answering paragraph 91 of the Complaint, no factual allegations are
2 made therein, and on that basis the paragraph goes unanswered.

3
4 92. Answering paragraph 92 of the Complaint, no factual allegations are
5 made therein, and on that basis the paragraph goes unanswered.

6
7
8 **AFFIRMATIVE DEFENSES**

9 As separate and distinct affirmative defenses, defendants allege each of the
10 following:
11

12 93. The damages alleged were directly and proximately caused and
13 contributed to by the negligence of decedent, and the extent of damages sustained, if
14 any, should be reduced in proportion to the amount of said negligence.

15
16 94. The damages alleged were directly and proximately caused and
17 contributed to by the negligence of other persons, and the extent of damages sustained,
18 if any, should be reduced in proportion to the amount of said negligence.

19
20 95. The force used against decedent, if any, was caused and necessitated by
21 the actions of plaintiff, and was reasonable and necessary for self-defense.

22
23 96. The force used against decedent, if any, was caused and necessitated by
24 the actions of decedent, and was reasonable and necessary for the defense of others.

25
26 97. The claims are barred by the statute of limitations set forth in California
27 Code of Civil Procedure § 340(3).
28

1 98. The action should be abated in that all of the heirs of decedent have not
2 been joined as parties.

3
4 99. The action is barred for lack of standing to sue.

5 100. As to the federal claims and theories of recovery, the answering
6 defendants are protected from liability under the doctrine of qualified immunity,
7 because defendants' conduct did not violate clearly established statutory or
8 constitutional rights of which a reasonable person would have known.
9

10
11 101. Defendants City of Los Angeles and Alejandro Downey, and all
12 defendants sued in their official capacities are immune from the imposition of punitive
13 damages.
14

15 102. The state claims are barred for plaintiffs' failure to comply with the
16 provisions of the California Tort claims Act, Government Code § 910 et seq.
17

18 103. Defendants are immune from liability pursuant to the provisions of each
19 of the following California statutes, each of which is set forth as a separate and distinct
20 affirmative defense:
21

22 Government Code §§ 815.2, 815.6, 818, 820.8, 834, 834(a), 835, 835(a) and
23 845.6
24

25 Penal Code § § 836 and 836.5.
26

27
28

....

DEMAND FOR JURY TRIAL

WHEREFORE, defendants pray for judgment as follows:

1. That plaintiffs take nothing by this action;
2. That the action be dismissed;
3. That defendants be awarded costs of suit;
4. That defendants be awarded other and further relief as the Court

may deem just and proper, including an award of attorney's fees pursuant to 42 U.S.C. §1988.

DATE: December 23, 2016

MICHAEL N. FEUER, City Attorney

THOMAS H. PETERS, Chief Assistant City Attorney

CORY M. BRENT, Supervising Assistant City Attorney

BY: /s/ - Craig J. Miller

CRAIG J. MILLER, DEPUTY CITY ATTORNEY

Attorneys for Defendants **CITY OF LOS ANGELES**
and **ALEJANDRO DOWNEY**

PROOF OF SERVICE

I, MARGARIT AVESYAN, declare as follows:

At the time of service I was over 18 years of age and not a party to this action. My business address is 200 N. Main Street, 600 City Hall East, Los Angeles, CA 90012, which is the County, City and State where this mailing occurred.

On December 23, 2016, I served the document(s) described as:

**ANSWER OF DEFENDANTS
CITY OF LOS ANGELES AND ALEJANDRO DOWNEY TO PLAINTIFFS'
FIRST AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL**

To all the interested parties in this action:

LAW OFFICES OF DALE K. GALIPO

*Dale K. Galipo, Esq.,
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I served a true copy of the document(s) above by:

☐ Personally delivering it to the person(s) indicated below in the manner provided in FRCivP 5(b).

☐ Depositing it in the United States Mail in a sealed envelope with the postage thereon fully prepaid to the address(es) above.

Executed on December 23, 2016, at Los Angeles, California.

☐ I hereby certify that I am a member of the Bar of the United States District Court, Central District of California.

1 [xxx] I hereby certify that I am employed in the office of a member of the Bar
2 of this Court at whose direction the service was made.

3 [xxxx] I hereby certify under the penalty of perjury that the foregoing is true
4 and correct.

5 *Margarit Avesyan*

6 _____
7 MARGARIT AVESYAN
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